UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NEW YORK

Case No. 18-71748

- x

In the Matter of:

ORION HEALTHCORP, INC.,

Debtor.

- x

Adv. Case No. 20-08042-ast

- x

HOWARD M. EHRENBERG IN HIS CAPACITY AS LIQUIDATING TRUSTEE OF ORION HEALTHCORP, INC.,

Plaintiff,

v.

HOWARD M. SCHOOR,

Defendants.

- x

Adv. Case No. 20-08038-ast

- x

EHRENBERG,

Plaintiff,

v.

EVICORE,

Defendant.

- x

Adv. Case No. 20-08049-ast

- x

EHRENBERG,

Plaintiff,

v.

WALIA, et al.,

Defendant.

- x

Adv. Case No. 20-08051-ast

- x

EHRENBERG,

Plaintiff,

v.

SARTISON, et al.,

Defendant.

- x

Adv. Case No. 20-08052-ast

- x

EHRENBERG,

Plaintiff,

v.

ABRUZZI INVESTMENTS, et al.,

Defendant.

- x

United States Bankruptcy Court
290 Federal Plaza
Central Islip, New York 11722

January 21, 2021
10:01 AM

B E F O R E :
HON ALAN S. TRUST
U.S. BANKRUPTCY JUDGE

ECRO: UNKNOWN

HEARING re 42 Motion for Summary Judgment Filed by Plaintiff Howard M. Ehrenberg

Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

CLERK: Good morning. I am Yvette Mills, Courtroom Deputy for Chief Judge Alan S. Trust presiding. These hearings are being recorded. Please speak clearly.

I just want everyone starting with the Debtors' attorney to just give your appearance and who you represent.

MR. NOLAN: Good morning. Jeff Nolan from Pachulski Stang & Ziehl, along with Ilan Scharf, representing the Trustee, Howard Ehrenberg.

CLERK: Donald Campbell?

MR. CAMPBELL: Yes. Donald Campbell on behalf of Howard Schoor, S-C-H-O-O-R.

CLERK: Could I have Joseph Orbach?

MR. ORBACH: Joseph Orbach. I'm just on a listen only. I represent Howard Ehrenberg, but not in any of the adversaries proceeding today.

CLERK: No problem. Lauren Pittinsky. Maryann Hadden.

MS. HADDEN: Maryann Hadden from Parlatore Law Group, LLP, on behalf of 2 River Terrace.

MR. PITTINSKY: Lawrence Pittinsky, Rosenberg & Pittinsky, on behalf of the Board of Managers of River House Condominium.

CLERK: Sanford Rosen.

MR. ROSEN: Good morning. Sanford Rosen, Rosen &

Associates PC, on behalf of Arvind Walia.

CLERK: And can I have the person whose phone number is 917-809-0346?

MR. GYPARAKIS: Good morning. Paris Gyparakis, Rosen & Associates, counsel to Arvind Walia.

CLERK: What was your name?

MR. GYPARAKIS: Paris Gyparakis, G-Y-P-A-R-A-K-I-S.

CLERK: What was the first name?

MR. GYPARAKIS: Paris, like the city, P-A-R-I-S.

CLERK: And the last name?

MR. GYPARAKIS: G-Y-P-A-R-A-K-I-S.

CLERK: Okay, thank you. I believe we have all the parties, Judge. Case No -- well, it's adversary starting with 20-8042, Ehrenberg v. Howard Schoor.

MR. CAMPBELL: Schoor.

THE COURT: Take appearances, please.

MR. NOLAN: Yes, Good morning, Your Honor. Jeff Nolan appearing on behalf of the Plaintiff, Howard Ehrenberg in his capacity as a liquidating trustee.

MR. CAMPBELL: Good morning, Your Honor. Don Campbell from the Law Firm of Giordano Halleran & Ciesla on behalf of Defendant, Howard Schoor.

THE COURT: All right. As Ms. Mills did, I'm just going to ask if everyone else will mute their line. If

you're not involved in this hearing, please mute your line.

All right, Mr. Nolan.

MR. NOLAN: Yes, Your Honor. As the Court may recall, this is an adversary. It's about $160,000 at issue, it's a fraudulent conveyance case under the Bankruptcy Code, as well as under the New York Debt and Creditor Law.

We have a case management and discovery plan in place; fact discovery was to be closed as of yesterday, and expert designations are at the end of the month, and we have gone forward with the depositions of the plaintiff.

As you may recall, the plaintiff also requested that the Court allow the plaintiff to file a summary judgment motion. We submitted a letter to the Court approximately a month ago, and the Court directed that counsel meet and confer and submit a joint statement of uncontroverted facts, which the parties have done and have submitted a joint statement of uncontroverted facts and it should be before the Court.

I'll allow -- I know -- I got an email this morning saying that the defendant wanted to address some additional time. I'll leave that to my colleague and opposing counsel for the defendant.

THE COURT: Let me ask, Mr. Nolan, before you toss the baton so to speak. The letter that was submitted and requested a pre-motion conference references New York DCL

276. Is it the plaintiffs' contemplation that if you move forward with summary judgment, it would solely be on an actual intent of fraudulent transfer claim?

MR. NOLAN: No, Your Honor. We would also be under 273 of the New York Debtor and Creditor Law, so it would be a fraudulent, intentionally fraudulent transfer as well as a constructively fraudulent transfer, as well as the Bankruptcy Code within the 548.

THE COURT: All right. And so, I know you said your designations under the scheduling agreement for experts are later this week or later this -- well, later this week, next week. Is it the intention of the plaintiff to submit an expert opinion on solvency or insolvency on the relevant dates of the transfers as part of the summary judgment motion?

MR. NOLAN: Well, I was hoping that the Court could -- okay, the immediate answer is, Your Honor, we would be filing a motion for summary judgment. I think at this point, since we're so close to the expert designation date, that it would make sense to allow the expert report to be exchanged and to allow just one, you know, bite at the apple on summary judgment, which would incorporate all the theories of liability under the Complaint.

THE COURT: All right. All right, thank you. Mr. Campbell.

MR. CAMPBELL: Yes, Your Honor, good morning. Donald Campbell.

Mr. Nolan is correct. We have issued a subpoena to Merrill Lynch Bank of America. We received a phone call yesterday from Bank of America requesting additional time to respond to provide documents. We just sent a letter to Mr. Nolan this morning asking if he would consent to a two-week extension of discovery solely to provide Bank of America additional time to provide those documents.

Those documents are a request for the transfers of the funds that were loaned by Mr. Schoor and directed to a Merrill Lynch account, and it's our hope that we're looking for information with regards to the connection, if any, between the debtor entities and this Merrill Lynch account, so we'd ask for that short request.

And Mr. Nolan hasn't had an opportunity to consent or not, but we'd ask for that short extension, Your Honor.

THE COURT: All right. In terms of the designations of experts which are coming up, is it the defendants' intention to retain an expert on solvency?

MR. CAMPBELL: Yes, Your Honor. We have not seen the plaintiffs' expert report yet, but obviously, we'd look to evaluate that and retain an expert to review and analyze the trustee's report on insolvency at the time of the transfers.

THE COURT: All right, thank you. Mr. Nolan, let me go back to you then. If I'm going to have competing expert opinions on solvency at the relevant dates of the transfers, wouldn't it be less expensive and potentially no more time consuming to simply try the case rather than go through a potentially expensive summary judgment process?

I've looked at the stipulated facts. It appears to the Court that the parties have obviously attempted to limit the issues that would need to be tried at the time of trial. But unless there's an agreement on solvency or insolvency of the transferor entity on the date of the transfers, don't I end up trying the case on solvency anyway?

MR. NOLAN: Well, Your Honor, the -- if it's an intentionally fraudulent transfer, solvency is not an area of inquiry. And what I think the facts that we stipulated to show is that there is a promissory note between Mr. Schoor, who was the neighbor of Mr. Parmar, and it says it's a personal loan.

And in discovery, we asked for any documents surrounding the loan, and everything that the plaintiff received back, including the testimony of the defendant, is that this was a personal loan made not for business purposes and which Mr. Schoor continually over a period of five years asked Mr. Parmar to honor his word as a friend, as a loan

that was made in friendship.

And I think based on the fact that there's no documents tying the loan that was given, and the fact that it's undisputed that the money that was paid back was paid back with the debtors' funds, that defendant can't simply just rely on oral testimony from Mr. Schoor that says, well, he told me that somewhere along the line, he was going to use this for his business.

I think the case law in New York demands that there be at least some documentation, (a) showing that it's a valid antecedent debt and that it's an antecedent debt of the debtor.

And then the most compelling of all, Your Honor, on the fraudulent -- on intentional fraudulent conveyance is, as the Court knows, under both the New York Debt Creditor Law and the Bankruptcy Code, it's the intent of the transferor that's at issue, which is Mr. Parmar.

And the plaintiff has undisputed evidence that after this personal loan was given between Mr. Parmar and Mr. Schoor and after the debtor paid back the debt with the debtors' monies, Mr. Parmar and Mr. Chivukula, the CFO, went back and created a fake consulting agreement, a consulting agreement that I gave to Mr. Schoor at his deposition, and he said "I didn't sign it, I've never been a consultant to the debtor, I've never given any consulting services to any

of Mr. Parmar's companies". And that's just per se evidence of a fraudulent conveyance.

It was coded in the debtors' books and records as professional fees, and Mr. Chivukula in an email to Mr. Parmar even says, "Hey, we have to come up with some reason for why we paid this loan back."

THE COURT: Mr. Nolan, you're now circling back to my initial question to you, which was the trustee's intending to move forward for summary judgment just on the DCL 276 actual intent claim or more, because I understand the narrow strike argument that you're making on the motion that's not in front of me yet, it's actual intent 276 when we're done here.

MR. NOLAN: Sure.

THE COURT: And if they're asking to do is move for summary judgment on that one claim, I understand that; that's narrow -- you might win, you might not. But to broaden it out to include reasonably equivalent or lack of reasonably equivalent value under constructive fraud claims; that's a beast of a different nature.

So now I'm back to the first question I asked you, which is, does the trustee want to file a summary judgment motion while it's full summary judgment, it's only on the 276 issue.

MR. NOLAN: Your Honor, thank you for the

clarification. I think that's correct. I think then we could limit the single issue in front of the Court to be the New York Debt and Creditor Law 276 cause of action.

THE COURT: All right. Mr. Campbell, you said that you're waiting on some documents from Merrill Bank of America, and I'll just treat those as documents that you would want for response to a summary judgment -- to respond to a summary judgment motion on the 276 actual intent claim.

Is there any other discovery that's owed or outstanding that might relate to the actual intent claim?

MR. CAMPBELL: At this time, Your Honor, I don't believe so. Of course, I haven't seen the Merrill Lynch documents and it's possible that that could lead to additional requests, but I think it's unlikely; however, I don't -- I would be speculating if I know.

But based on Bank of America's voicemail message they left me, it sounds like it may be voluminous, but I just don't know, so I hope that's a sufficient answer, Your Honor.

THE COURT: Okay, fair enough. So then let's proceed on this basis. Relevant to this adversary proceeding and some of the others that we're going to talk about this morning, the Court is satisfied a trial date in early June for some of these adversary proceedings or potentially others that are not in front of me today.

It would seem that given the good work that you all have done on the stipulated facts, there's probably not much more that would be necessary for the plaintiffs' summary judgment motion and then obviously any response from the defendant. I don't know at this point that I need a reply because in a reply, I'm not going to consider any evidence that wasn't submitted either through the stipulation or the ultimate motion.

So I can set a schedule for you all that tracks you toward a June 7 trial week setting, but also potentially gets to resolution of the 276 issue before you all spend the big money on expert witness. Now, you may be all ready to do that, you may want to revisit your timeline, but I would recommend that you all discuss whether or not you really want to now spend the money on the timeline you're on for experts if we're going to take a rifle shot on the 276.

Bu the Court has set aside -- Miss Mills, what is the date in March that we're now using for Orion?

CLERK: I believe it's March --

THE COURT: Is it March 16th?

CLERK: Yes.

THE COURT: March 16th?

CLERK: Yeah, March 16th at 10:00.

THE COURT: All right. So what we can do is this is since you all are obviously working cooperatively

together, is for you all to come up with a submission schedule that would have the summary judgment argued on March 16th at 10:00 a.m.

My admonition to you all is I'm happy for you all to agree to dates and deadlines that work for you respectively, but I want to make sure that everything the Court's being asked to look at is last submitted by March 9th, so that we have a week ahead of time.

So that should give the plaintiff time to go ahead and get the summary judgment record ready, let the defendant file the response in advance of March 9th. And again, I don't know that I'm going to need a reply brief on these issues, but if one of you believes it's critical to have it, then just make sure that it's filed by no later than March 9th.

And again, recognizing that if summary judgment were denied, you would be tilting toward a June 7 trial, just recalibrate how you want to handle the expert deadlines in the event -- this is capital I, capital F -- if the case is resolved at summary judgment. Fair enough?

MR. NOLAN: Understood, Your Honor.

MR. CAMPBELL: Yes, Your Honor.

THE COURT: So then what I'll have you do is just go ahead after -- go ahead and confer offline, and then just submit a letter outlining the dates by which plaintiff shall

file, defendant shall respond. I'll also order that once it's submitted, but you know the outside date I'm looking at is March 9th with an argument March 16th at 10:00 a.m.

For today's purposes, I'm going to adjourn the pretrial conference over to the March 16 at 10:00 a.m.; that gets it on that calendar. When the plaintiff files their summary judgment motions, just want to make sure that you then give notice of hearing for it for March 16th at 10:00 a.m.

As far as the additional time to get the documents from Merrill and Bank of America, I'll take Mr. Nolan not saying not to that as assent to that extension, so that will be fine, Mr. Campbell.

MR. CAMPBELL: Thank you, Your Honor.

THE COURT: All right. And also, to the extent that you all modify the scheduling order that was previously submitted to account for our discussion this morning about summary judgment and expert witnesses, just reflect that in the same letter to the Court to be so ordered.

We'll then issue the trial scheduling order that will include these dates and deadlines in it so that you're on trial track for June 7th in the event that summary judgment were denied as a result of the March 16 hearing.

All right. Anything else we need to discuss then this morning on 20-08042, other than the Court saying

obviously feel free to settle between now and then and take it out of my hands?

MR. CAMPBELL: For defendant, nothing further, Your Honor.

MR. NOLAN: One question from the plaintiff. Your Honor, how is it in New York? Are you doing trials via Zoom or is everything shut down?

THE COURT: So as of right now, the March 16 will definitely be via WebEx, and we'll issue an order setting that WebEx protocol. June 7, I don't know yet whether we'll be live or Memorex, I guess is the old line, but whether we'll be live or via WebEx or some combination; details to follow on that. But at the current time, I have been and will continue to try cases via WebEx even while we're operating under our emergency code of procedures.

MR. NOLAN: Okay. Thank you, Your Honor.

THE COURT: All right, very well. Thank you, both.

MR. CAMPBELL: All right, thank you. Have a great day.

CLERK: Case Number 20-8049.

MR. NOLAN: Jeff Nolan appearing on behalf of the Plaintiff, Howard Ehrenberg.

MR. ROSEN: Good morning, Your Honor. Sanford Rosen, Rosen and Associates, PC. And I'm appearing on

behalf of the Defendant.

THE COURT: All right. Very well.

MR. NOLAN: Your Honor?

THE COURT: Mr. Nolan, on status, please go ahead.

MR. NOLAN: Yeah. Your Honor, so we had submitted at the prior pretrial conference, Counsel and I had at least uploaded a case management and discovery plan. It has not been executed by the Court. In the interim, since the last scheduling conference, Counsel for the Defendants and I have met and conferred and we went through some of the issues in the case.

This is a $6-million fraudulent conveyance action. And there's an issue with some of the transfers. And Defendants had indicated they had received some of the transfers, and they had not received others. The Trustee has subsequently gone back and looked at some of the underlying transfers that are at issue. And I believe, Your Honor, what we are going to do is either amend the complaint to add more detail for the Defendant as to some of the multi-million dollar transfers or, you know, provide that information with specificity.

And once we do that, I think the parties at least are working amicably enough that we can submit a case management and discovery plan to the Court that'll track this in a similar fashion to some of the other adversaries.

THE COURT: All right. Mr. Rosen?

MR. ROSEN: No, that's accurate, Your Honor.

THE COURT: All right. In terms of the dates and deadlines, I know that you all had from a prior conference talked about discovery ending yesterday and experts by early April. Are you talking about other dates, different dates, at this point?

MR. NOLAN: Yes, Your Honor.

THE COURT: Okay.

MR. NOLAN: We would submit a discovery plan that would probably have, you know, a two-week lag to go ahead. I mean we've done Rule 26 disclosures, but we've probably then set forth a fact discovery period which would be, you know, 90 to 120 days and then have the dates for experts similar to all the other case management and discovery plans that you've seen from our firm.

THE COURT: All right. So under current contemplation, I'm just trying to think when would be the most productive time to have you all back in. If you're talking about discovery -- fact discovery cutting off late April, perhaps May, and then experts to follow on, it may make more sense to simply bring you in for your next pretrial conference in May when we're setting up pretrial conferences for Orion. I don't know that it's going to be productive to have you all back in before then. Do you have

a sense of that, Mr. Nolan?

MR. NOLAN: Yes, Your Honor. I think we'll have the pleadings at issue in the next 30 days. So we could either -- a couple of different scenarios. We could either be back in front of the Court on March 16th, and the Court could enter a case management and discovery plan based on what the Court felt was appropriate where the parties were. Or I think we could simply stipulate to the case management and discovery plan and submit it to the Court for review and approval without, you know, having to clog the courtroom and see us again.

THE COURT: All right. The second sounds like it may be more cost effective and efficient. Mr. Rosen, do you have a view on that?

MR. ROSEN: I agree with you, Your Honor.

THE COURT: All right. So then let's do this, we'll set -- let you do it by amended complaint or a supplemental complaint. You all are working cooperatively together. I'll leave it to you all to work that out. What we'll do is we'll adjourn today's pretrial conference to May 18th at 2 o'clock. May 18th at 2 o'clock, anticipating that well before then the Court will have entered a trial scheduling order that would include the dates that the parties have worked out for close of discovery and other issues which you may stipulate to.

Obviously, if something comes up where you need us before May, you know where we are. But in terms of a pretrial conference on keeping the case tracking toward a trial, I think May 18th will work fine. And then once we get the amended proposed scheduling order in, then we'll issue that order and then we'll find you all a trial date consistent with the deadlines -- the dates and deadlines that you all are currently discussing.

But for today's purposes, Mr. Nolan, will you docket notice of adjournment of the pretrial conference to May 18 at 2 o'clock? And then we'll look for the submission of the amended proposed scheduling order.

MR. NOLAN: Thank you, Your Honor.

MR. ROSEN: Thank you, Your Honor.

CLERK: Case Number 20-8052.

MR. NOLAN: Jeff Nolan appearing on behalf of the Plaintiff, Howard Ehrenberg in his capacity as Liquidating Trustee.

THE COURT: Do we have Defendant's counsel?

MR. NOLAN: I did not hear him sign on. It's Anthony Giuliani.

THE COURT: Ms. Mills, do we have him on?

CLERK: Let me see if someone just came on. I don't have him on, Judge.

THE COURT: Okay. All right.

CLERK: I don't know --

THE COURT: Mr. Nolan?

MR. NOLAN: Yes, Your Honor. So, Your Honor, we have a case management and discovery plan in place in this adversary. Fact discovery is to be completed no later than March 15th. There's been no depositions yet, but there has been written discovery exchanged. And we're just moving along in that capacity. There's been a number of subpoenas issued. So, you know, nothing eventful to report to the Court.

THE COURT: All right. And we do have a proposed discovery control plan. I don't see that the June 7 date that the Court had discussed earlier would likely work for the trial on this one since expert discovery would not be completed until the end of May. I don't think that gives you all enough time.

MR. NOLAN: Yeah. In this one, Your Honor -- I'm sorry, I didn't fill you in on the big picture. This is a fraudulent conveyance cause of action for about $250,000. It's a little more complicated than some of the other matters. So I would agree with the Court there could be issues, since I've issued approximately six subpoenas to different entities, that could raise an issue, a factual issue trying to get everything in the door before the close of fact discovery.

So Plaintiff certainly is -- it's acceptable to the Plaintiff to have this on a little later of a trajectory than the Schoor matter.

THE COURT: All right. Would it make sense, again, in terms of cost and efficiency, to bring this one back in on May 18th? It'll be pretty close to the end of -- at least the contemplated end of expert discovery, we'll issue you a scheduling order that includes a trial date that incorporates the dates and deadlines that you all have agreed to. That trial date will not be June or earlier.

I don't know that there's a reason to bring you all back in before the May 18.

MR. NOLAN: Yes, Your Honor. I think that's acceptable. I mean depending upon what is, you know, determined through fact discovery, this might be a similar case as Schoor that might have an intentional fraudulent theory. And I mean we could all visit that in May 18th after fact discovery is cut.

THE COURT: All right. Fair enough. All right. So then for today's purposes, Mr. Nolan, if you'll docket notice of adjournment to May 18 at 2 o'clock, let Mr. Giuliani know we missed him. And in the event that there's a need for a pre-hearing, a pre-motion conference if the Plaintiff does tilt towards summary judgment on this one, unless there's a reason or need to have that sooner, then

you could also use the May 18 at 2 o'clock for that unless there's a need to have it sooner.

MR. NOLAN: Thank you, Your Honor.

CLERK: Case Number 20-8051.

MR. NOLAN: Jeff Nolan appearing on behalf of the Plaintiff, Howard Ehrenberg.

MS. HADDEN: And Maryann Hadden appearing on behalf of Defendant 2 River Terrace Apartment 12-J, LLC.

MR. PITTINSKY: Larry Pittinsky, Rosenberg & Pittinsky, appearing on Riverhouse -- Board of Managers of Riverhouse Condominium.

THE COURT: All right. The Court had notified the parties we were going to use this morning as argument on summary judgment. Let me ask before we launch into that, has there been any change on the status on the ground with respect to the sale of the unit or, in the bigger picture, settlement issues?

MR. PITTINSKY: Your Honor, Mr. Pittinsky speaking on the sale. I don't know if you want that to go first. The sale's scheduled for the 29th of this month and dependent upon what Your Honor does vis-à-vis the Plaintiff's motion, whether the sale will proceed or not on that date. But it was adjourned. If Your Honor remembers from the last court appearance, I made a representation to speak to the Board and to work cooperatively with all

parties. And we did adjourn the sale. The new date is January 29th.

MS. HADDEN: And, also, Your Honor, on that, same issue as to the sale. I was asked by my client --

THE COURT: Please state your name again, please.

MS. HADDEN: Oh, I apologize, Your Honor.

THE COURT: Just state your name again. That's okay.

MS. HADDEN: Maryann Hadden. I was asked by my client to file a proceeding in state court to attempt to stop the sale, obviously not knowing how things will resolve in front of Your Honor today in regards to the summary judgment motion. So an order to show cause and a complaint were both filed in state court yesterday. I do not have an index number yet, which is the only reason why I have not yet served them on Mr. Pittinsky.

But, Mr. Pittinsky, I will -- I'll actually email you a copy before I get the index number just so that you have the paperwork in advance.

MR. PITTINSKY: I appreciate that courtesy, but -- and I'm not going to debate this before Judge Turner. But under the rules, if you're seeking a stay, you are required to serve me with those papers prior to filing under the local court rules. So you have not done that.

MS. HADDEN: I have not even received an index

number, so I will -- we'll obviously not debate this at this point, but I'll speak with you on -- if it's acceptable to you, I'll give you a call once we're off the record here and we can have a conversation later.

MR. PITTINSKY: That's fine.

MS. HADDEN: Okay, thank you.

THE COURT: Let me, and I appreciate --

MS. HADDEN: Thank you.

THE COURT: -- I appreciate you all taking that dispute over there -- well, that narrow issue over there. But in terms of a bigger-picture issue, obviously, if there have been settlement discussions, I don't want to know who asked for what and who offered what, that's not my province. But have the parties discussed a protocol to monetize -- that's the big-dollar word they use in the Southern District of New York and other courts -- monetizing the unit, basically selling the unit off, paying off the -- kind of the liens that are putting the time trigger on their sale and then simply duking it out over who gets the rest?

MR. NOLAN: Jeff Nolan --

THE COURT: I assume, Mr. Nolan, that the Trustee's long-term plan if he prevails on litigation is he's going to sell the unit, convert it to cash, and figure out what to do with the money. So I'm wondering if you all have already had that discussion now to see if you can do

that now while the litigation sorts itself out.

MR. NOLAN: Well, Your Honor, I can state to the Court that I did have conversations with the Defendant to try to step around some of the difficulties with the lien that's against the unit and get it in a position that it could certainly go in that direction. That is accurate, Your Honor, that the Trustee's perspective is that this is an asset of the estate that should be monetized.

The Trustee certainly can hold title under the trust agreement. But the Trustee, as the Court would know, is not in the business of operating condominium units, residential condominium units. And -- but we just have been unable to unearth this condominium unit and was hoping that the summary judgment motion might present a path to do that.

I think the Plaintiff is certainly in agreement with what the Court is stating that -- I don't know if Mr. -- if the Defendant believes that the real property is unique in such a way that they would share that it's a money dispute as opposed to something, you know, deeper.

THE COURT: Ms. Hadden?

MS. HADDEN: There's certainly at least some personal property involved in the apartment that the manager of my client has not had access to. So in that sense, I can, you know, certainly represent that he at least would consider it to be an individual item of real property as

opposed to a monetizable asset.

And Mr. Nolan's absolutely correct. We did, you know, engage in some initial discussions about it. I can't say that we're at the point or even close to the point where I would describe it as being something where we're in agreement on it, not to say that that agreement isn't possible in the future but we're certainly not there yet.

THE COURT: All right.

MR. PITTINSKY: So, Your Honor, from the Condominium's point of view, if the unit gets sold by the entity that's technically on the deed, we would have our rights. But I don't see the Board waiting for that event to occur just in a vacuum, number one.

Number two, any claim by Ms. Hadden that there's been access denied or not permitted, it's just factually false. We would never make a claim. Actually, let me revisit that. If there's personal property in the apartment and our judgment is not satisfied by virtue of the sale, then we might seek a restraint against anything that's in the apartment if it's owned by the LLC. But that's getting ahead of myself in terms of the collection on the judgment.

THE COURT: From what's been told to the Court thus far, if this unit were sold in an arms-length open transaction and it didn't bring enough to pay off the condominium lien, we'd be having a much less pleasant

conversation than what we're having right now, so --

MS. HADDEN: I think that's accurate, Your Honor.

MR. NOLAN: Your Honor, Jeff Nolan for the Plaintiff. I think it would be a fair assumption for the Court that if the Plaintiff did prevail and the conveyance was set aside, that the Trustee would move to immediately, in a regular sale that could maximize the value, liquidate the property. And that would not necessarily mean that, you know, that the money realized couldn't be somehow, you know, utilized to, A, satisfy the Condominium Association and, B, before the Court's jurisdiction to do as it, you know, ultimately determines should be done.

I mean it would be an estate asset, and it would be subject to the bankruptcy court's oversight and approval just like any other bankruptcy court case.

THE COURT: All right. Well, I would encourage the parties to pick -- I will generously say pick up those conversations where they left off. I'm sure, as you all know, that there are procedures specifically under Section 363(f) of the Bankruptcy Code to have the sale of interest in which the estate -- property in which the estate claims an interest sold free and clear of lien, claims, encumbrances, have those liens attach to the proceeds, pay the condominium assessment and liens off, and then fight over who gets the -- what would appear at this point appear

to be several million dollars of proceeds.

That's not before me today. But, again, I would encourage the parties to pick those discussions up where they may have left off.

So let me turn then to, Mr. Nolan, if you want to then proceed on the summary judgment motion.

MR. NOLAN: Yes, Your Honor. Thank you.

Your Honor, we submitted a joint statement of fact, uncontroverted facts, with the cooperation of Counsel for the Defendant. And, you know, we're here on a Trustee's motion for summary judgment, because in the Trustee's opinion, this is a textbook case of a fraudulent conveyance. The underlying facts are not in dispute. There's no dispute that the transfer took place, that 5.6 million was taken out of the Debtor's bank accounts by the Debtor's CEO who controlled and operated a debtor entity in the healthcare sector, and he took the money out not to buy something related to the business of the Debtor but to buy a residential condo in Manhattan.

There's no dispute before the Court that the title to the real property was parked in an LLC which the CEO incorporated only days before and which he owns, controls, and says he solely manages. There's also no dispute before this Court that the CEO instructed his identity be concealed with respect it purchasing and occupying the condominium

unit. There's no dispute that he thereafter moved into the unit solely for his own personal benefit, and he's been using the condominium unit solely under his own control and personal benefit, allowed others to use it for their personal benefit including his family members, his girlfriend, et cetera.

I think one thing that should give this Court some confidence that the CEO manipulated and controlled this debtor entity however he wanted to use it is that after he moved into the property, he used the Debtor's credit cards to pay for the upkeep for at least a year and a quarter that he occupied the unit. It's not a disputed fact in the separate statement that about $67,000 was incurred on the Debtor's credit cards to pay for the taxes, the common costs associated with it.

There was nothing put forward in the opposition to justify why an executive with the Debtor could do such -- take such actions. That should give the Court another piece of evidence to indicate that the Debtor was manipulated by the CEO.

The motion sets forth, Your Honor, admissible evidence that the diversion of funds was, in fact, simply a cash-and-grab. The opposition does not dispute that the transaction occurred. They simply try to justify it here in 2020 and the year 2021 that, hey, there's some documents

that could be their contention would support the basis for a debt and the diversion of $5.6 million.

But the facts before the Court, Your Honor, it's not disputed that there's no book entries that, A, memorialize an antecedent debt and, B, there's no book entries -- nothing in the Debtor's books and records that evidence that the transfer of this real -- of the money and the transfer of the real property satisfied an antecedent debt.

So what the Court's left with is the estate which is depleted of $5.6 million and with no similar exchanging value given to the Debtor. And that's the textbook definition of a fraudulent conveyance, has the estate been depleted without exchanging property of similar value to the Debtor to the prejudice of the Debtor's unsecured creditors.

Our papers, the Mellon Bank case, which says that's kind of the big picture that the Court looks at when they look at a fraudulent conveyance. And if anything, Your Honor, the Plaintiff's contention is the opposition should give the Court some confidence that what the evidence the Plaintiff said occurred is in fact true. We submitted --

THE COURT: That's more -- Mr. Nolan, hang on, that's more on the actual intent side because I think you're now -- it sounds like you were now going into the constructive fraudulent transfer side. And let me ask you

on the constructive fraudulent transfer side, we do have a fairly extensive affidavit from Mr. Jones, but he's not presented as a solvency expert.

He's done a forensic analysis and is providing some contemporaneous and prior -- some contemporaneous, some subsequent documents. But he does not -- possibly because he wasn't retained to do this, he's not actually expressed an opinion on solvency or insolvency on or before or after the dates of the transfers of the payments for the condo.

MR. NOLAN: That's correct, Your Honor. We did not submit a -- and we have not submitted a solvency report. The motion on the constructive fraud side of the analysis is basically that, number one, if the Debtor evidences to the Court or the Plaintiff evidences to the Court that there was no consideration for the transaction, then insolvency -- the Debtor's presumed to be insolvent, as well as if the -- under 273(a), there's another theory that we set forth to the Court which that under 273(a), the analysis is good faith and fair consideration.

And if the Plaintiff shows to the Court it's a self-interested transaction, that's a transaction where the defendant is on both sides of the equation and which we have shown here, it's undisputed. I mean the opposition, Your Honor, essentially tries to justify the transaction by saying Mr. Parmar, the CEO of the transferor, is simply

paying himself what he was entitled to as the transferee.

Under New York Creditor Law 273-A, that's a self-interested transaction and it cannot -- it can never be made in good faith. That's a bad-faith transaction in that the CEO is favoring himself over creditors of the estate. And the transaction fails under 273-A regardless of the issue of solvency, irregardless.

THE COURT: Well, what if Mr. Parmar were actually owed $6 million at the time of the condo purchase and paid himself $6 million directly? Is that still on its face a fraudulent transfer?

MR. NOLAN: Yes, it is. Because the way -- first off, there's nothing in the books and records to indicate -- I mean there's no W-2, there's no -- there's nothing in the books and records that memorializes that this is a compensation, that there was compensation paid to an executive. I mean that would be in the Debtor's books and records as a liability. It would be in the Debtor's books and records as an expense that could be set off against income.

I mean there would be any number of different places in the Debtor's books and records if Mr. Parmar had actually take that money as income that that would appear. But there's nothing in the books and records to say that. So --

THE COURT: No, I understand that. But it sounded as if you were arguing even if -- capital I, capital F -- even if Mr. Parmar was owed $6 million, buying the condo as his form of compensation is on its face a fraudulent transfer, whether actual or constructive, because there's an absence of good faith.

MR. NOLAN: Yes. It's -- Your Honor, we would say that that's an accurate statement of the law that an insider payment is not in good faith regardless of whether it's paid on account of an antecedent debt -- and I would instruct the Court in my reply papers, I cited to the American Media v. Bainbridge decision. And American Media, the president was -- of the debtor was a gentleman by the name of Ruderman. He paid himself to repay loans which he said that were valid. And, in fact, in that case, you know, he submitted evidence that there was a debt that was owed to him and he took the money out to pay himself back.

And the court in that case said that the requirement of good faith is not fulfilled through preferential transfers of corporate funds to debtors -- to directors, officers, or shareholders of a corporation. And so -- and I cited a number of other cases in New York that also stand for that proposition that that type of a transaction violates 273-A on its face.

There's some other -- there's another case, Your

Honor, is the American -- let me just grab this. It was the Atlantic Shipping Corp v. Chemical Bank decision, Your Honor, 818 F.2d 240 (2d Cir.1987). And that case sets forth that New York -- it's well settled in New York that the general rule or the exception to the general rule that repayment of an antecedent debt does not constitute fair consideration when the recipient of the payment is a corporate insider, i.e., an officer, director, or major shareholder of the transferor corporation.

And that is admitted by the Defendant in the opposition, Your Honor, at paragraph 32. In one paragraph, Mr. Parmar and the Defendant admit that this is a self-interested transaction solely to benefit one person who is the executive officer and director and majority shareholder of both the transferor and the transferee.

So the motion, at least, Your Honor, from our perspective under constructive fraud sets forth two paths that would allow the Court to find that this is a constructively fraudulent transfer even without addressing the issue of solvency.

In fact, we thought, Your Honor, in submitting the motion that even though we didn't have a solvency opinion that we could rely on the tax records and the Debtor's books and records, Your Honor. And I cited to a couple of cases at page 22 of my motion that sets forth if a debtor has a

negative income for each year and is consecutively throwing up negative losses like the Debtor was doing in this case -- negative 12 million in 2015, negative 40 million for net income in 2016, negative 20 million in 2017 -- and their negative retained earnings were $133 million by the time they filed the petition in bankruptcy, that that is evidence of insolvency. Negative net operating losses are evidence of insolvency under the Bankruptcy Code under the In re FHI decision.

And it at least pushed the burden over to the Defendants, Your Honor, to come forth with some credible admissible evidence that what the Trustee was setting forth that the Debtor was just racking up losses every year was not the case. And nothing was put forth for an argument that was submitted by any admissible evidence, Your Honor, to give the Court some type of hesitation that the Debtor was actually solvent or had some ability to pay its debts.

In fact, the opposition admits a separate statement of fact, Your Honor, that there was a judgment issued against the Defendant -- or the Debtor in 2015 for about $200,000 and that debt was never paid by the Debtor. It was a judgment out of the Southern District of Texas, and it is outstanding as of today.

And there's a third path for finding a valid constructive fraud against the -- under New York Debtor

Creditor Law, there's a third path for this Court to find or grant the summary judgment if the Court finds that either at the time or before the transfer there was a docketed judgment against the Debtor and it was unsatisfied, then it a per-se constructively fraudulent transfer.

THE COURT: Mr. Nolan, jumping from that because that does segue whether you intended to or not to another question the Court has which is it's really -- I view it as a remedies question, and I think both sides touch on it on the papers, which is for whom the recovery may be set aside.

There seems to be an issue raised at least by the Defendant that, well, even if you're right, even if the Plaintiff is right on its recoveries theories, the conveyance can only be set aside to satisfy the 200,000 or so dollars of creditors that existed at the time of the purchase. Will you address that?

MR. NOLAN: Yes, Your Honor. I took the Plaintiff's -- the Defendant's argument to mean that the Trustee -- only that the party that docketed the judgment would be entitled to make a claim of constructive fraud under 273-A, that you actually had to be the creditor that was chasing the debtor and was unpaid.

And I set forth in our reply, Your Honor, a number of cases that specifically held that you don't need to be the -- it seems to be it would be a standing issue is that

you don't need to be the creditor that actually docketed the judgment to say that a transfer that occurred after your judgment was docketed should be set aside.

And the reason I would submit to the Court that our interpretation is more reasonable is, number one is the opposition didn't set forth any case law to guide the Court that the Court should read that statute so narrowly that it's restricted to the judgment creditor. And number two is, Your Honor, our reply set forth three cases, one of them's in the Eastern District Bankruptcy Court New York that set forth that a trustee could -- if the docketed judgment exists at the time of the transfer, the trustee can step into the shoes and can enforce that theory of liability against the transferee and for good reason, Your Honor.

Those cases talk about the fact that it's the purpose of 273-A is to stigmatize transfers that allow money to go out of the estate when a valid judgment debtor -- judgment creditor exists. It's just -- it's not something under New York law that ever has been encouraged, and those particular cases -- one of them which I believe is the Akerman case, are all instances which the Trustee steps into the shoes. And that's nothing inconsistent with cases that are in front of the Court.

Trustees just by virtue of the fact of a petition being filed in bankruptcy are always forced to step into the

shoes of a creditor to use state fraudulent conveyance law. I mean, the predicant --

THE COURT: My question is not so much the 544(a) imbued or hypothetical creditor status of the trustee. My question is really -- and the reason I posed it is more of a remedies question which is, if the allegation is the transfer was fraudulent as to creditors who existed at the time of the transfer, is the trustee's recovery limited to the amount necessary to satisfy those creditors as opposed to a transfer which is fraudulent as to existing and future creditors and whether or not and to what extent there's evidence in this record of who those future creditors may be.

Again, I'll try to pose the question differently. Set insolvency issues aside, if the debtor that made the payments at the time the debtor made the payments owed $250,000 to other creditors and chose not to make those payments, those creditors should be satisfied from the recovery of the asset transferred. So who is it here for whom the trustee seeks recovery if it's more than just the two creditors who existed or had claims or judgments at the time of the condo purchase?

MR. NOLAN: I am trying to identify. I identify for the Court two cases that came out of New York that talked about a trustee stepping in and setting aside a

transfer to satisfy a judgment creditor that existed on the -- had docketed a judgment. I don't believe either one of those cases, Your Honor, made a distinction about limiting or quantifying the amount of damages based on the judgment. I think the bigger picture on those cases, Your Honor, and I think it's borne out by the cases -- the case comments in the case law is that the court stigmatizes the transfer where legitimate creditors not only were owed money but docketed a judgment and insiders went ahead and transferred money around those creditors and those -- as long as the trustee can prove that those creditors were never paid, that the rationale is to set off the transfer.

I guess the Court could be in a situation at some point if the Court agree with my interpretation that you could have a transfer that's more deminimus -- I mean, a transfer that's larger and you could have a deminimus judgment and there could be, you know, an equity issue about, well, geez, if it's only $1,000 judgment and the transfer is so much larger, you know, what happens to the difference if you set it aside.

I mean, in this case, Your Honor, general unsecured creditors are not anywhere in the money right now. In fact, the Court knows that secured creditors are owed money in this bankruptcy estate. If the transfer is set aside in this particular case for 5.6 million then there's

not going to be -- there's no issue of the creditors receiving anything significant until the secured creditors are paid. But the amount of money that comes in from the trustee first goes to secured creditors and then unsecured creditors.

So I don't think we would be forcing the Court into some twisted fact pattern that, you know, a simple $200,000 judgment that was recorded in 2015 is disproportionate to the $5.6 million transfer that's before the Court.

THE COURT: Right. Well, that -- but again, if I'm understanding the plaintiff's papers correctly, you all are arguing that the transfer was fraudulent as to existing and future creditors. Is that right?

MR. NOLAN: Correct, Your Honor. The way the law is set is it's not only if -- it leaves the -- if the transfer, you know, violates the (indiscernible) that it's to an indicter. It's not made for fair consideration. But if the debtor's insolvent, it's fraudulent as to not only existing creditors but future creditors.

THE COURT: All right. I do want to -- I have some questions for Ms. Hadden so I'll come back to you, Mr. Nolan, for rebuttal, but I do want to give Ms. Hadden a chance to argue.

MS. HADDEN: Certainly, Your Honor. Maryann

Hadden. Your Honor, do you want to address your questions first or do you want me to sort of free flow first and then you can catch up to me as I got? How would you prefer?

THE COURT: It may be easier for me to start with a question I have -- well, maybe a couple questions I have and then I'll let you get to the flow of the argument that you wanted to present it.

The first being, I don't have -- I don't seem to have any summary judgment -- admissible summary judgment -- evidence from the defendant.

MS. HADDEN: Part of that, Your Honor, was my time frame issues. I had some issues getting in touch with my client and getting documents into the format that they should have been in for the Court. Rule 56(e) obviously does provide the Court with a range of possible options in that scenario, obviously including the opportunity to give me an opportunity to make some of those documents -- and by make, I don't mean create -- but, you know, for example, the bank statements that I submitted. I submitted them as redacted as to the payees and payors because it was a public document. Obviously, I can submit the full unredacted document to the Court with copy to counsel in a non-public, non-ECF forum. I believe I have a certification from Chase as to those records because they were obtained as part of discovery in another matter. I may not so I need an

opportunity to get a discovery from Chase as to that.

As to the consulting agreement between FUH and CHT, that being another obviously substantial exhibit from the defendant's perspective, that's something where a certification would presumably have to come from Mr. Parmar as the manager of FUH. And obviously --

THE COURT: Those are the documents more to which the Court's question goes because I don't see in the summary judgment record an affidavit from Mr. Parmar saying that on or about the dates of the transfers at issue I was owed 6 million, 5 million, 9 million, $12 million by the transfer or entity and the debts that were owed to me were satisfied in part, in full, through the purchase of the 2 River Terrace condominium unit.

MS. HADDEN: That's correct, Your Honor.

THE COURT: I don't see anything along those lines.

MS. HADDEN: I understand. Part of that was essentially an excess of caution on my part in that Mr. Parmar obviously was a defendant in a indicted criminal case so my effort is always to avoid any scenario in which I am requesting affidavit from him for anything that could be connected to that criminal matter. And so I incorrectly relied on the burden being on the movant in a Rule 56 motion in that it is up to the movant to establish that the

evidence is such that a reasonable jury could not return a verdict for the opponent. But obviously I (indiscernible) Parmar.

THE COURT: No, I'm not posing it as an error in strategy of substance. I'm just -- in looking over the summary judgment record that I have -- obviously, the Court should only consider evidence which is in the form which would be admissible at the time of trial and we do have a series of objections from the trustee to the summary judgment evidence that's been submitted whether due to lack of affidavit or attestation from Mr. Parmar or from anyone else who may have knowledge of the relevant fact.

And so for 56(e) purposes, if your response as well under Rule 56(e), I need more time to gather the documents -- if that's one -- if it's in the response, and, two, if it's a question of, I need an affidavit -- the defendant would like to submit an affidavit from Mr. Parmar to attest to the facts that are asserted in the response, however, due to other circumstances, he's unavailable to submit an affidavit at this time, for some time, for whatever period of time -- I'm not going to consider as evidence evidence which is not in admissible form as Rule 56 requires.

MS. HADDEN: I understand that, Your Honor. And, yes, it's -- so I sort of have a two-part response. As to

items such as the bank statements, I would be able to provide certified copies for the Court. It just may require a, you know, brief amount of time in order to do that. However, as to an affidavit from Mr. Parmar because of the extenuating circumstances os the criminal case, I'm in a situation where he would be willing to provide an affidavit. I would have the ability to obtain an affidavit but it puts him in a very awkward position in terms of his criminal case and his Fifth Amendments rights. I'm very hesitant to do that.

THE COURT: So then -- and I don't know. We can talk more specifically about the bank records if that's something that the trustee is maintaining its objection to, but in terms of the allegations that on or about such-and-such a date, I, Mr. Parmar, was owed 4 million, 8 million, 12 million, whatever the number is, there's just no evidence in the record to support that. And the second prong of that going back to something Mr. Nolan -- the trustee -- argued in papers and this morning, even if that is the case or was the case, there's nothing in the record indicating -- in admissible or inadmissible form -- that Mr. Parmar or anyone else took on the tax burden of actually receiving $6 million or so in compensation back in December of 2015 and February of 2016. So is 2 River asserting that in fact Mr. Parmar or his entities received $5.5 million of compensation in 2015

and 2016 through the purchase of the condominium?

MS. HADDEN: Yes. And I cannot answer the question as to whether or not 2 River filed tax returns reflecting that because I don't know the answer honestly. I should have looked at that --

THE COURT: Well, the argument --

MS. HADDEN: -- but I don't have (indiscernible)

THE COURT: Yes. The argument in the papers is not that 2 Rivers received five-and-a-half-plus million dollars of compensation. The argument in the papers is is that Mr. Parmar or First United Health or one of his other entities received $5.5 million of compensation through the purchase of the condominium and if that's the case, presumably there exists tax filing documents -- 1099, W2s, whatever they may be -- which would actually exhibit that the entities who are claiming that that was their compensation actually then took on the tax and associated burdens of claiming that compensation for state and federal tax reporting purposes.

MS. HADDEN: Yes, Your Honor. That is correct. And that, again, would be --

THE COURT: I don't see, for example --

MS. HADDEN: -- in the category of an item -- I apologize.

THE COURT: No. But I don't see, even in

inadmissible form, you know, here's the 1099 that was issued from the transfer or entity or the other form of tax documents showing that in fact it expensed it out or applied it to the compensation owed.

MS. HADDEN: That's correct. And that was entirely an oversight on my part. It honestly didn't even occur to me until Your Honor started speaking a moment ago that that would have been another way of showing the way in which the compensation was received and the fact that it was acknowledged by Mr. Parmar and by his constellation of entities -- using the word constellation advisedly.

THE COURT: No pun intended. But I --

MS. HADDEN: Yes. No pun intended.

THE COURT: I may have misunderstood. I thought the defendant was arguing that, not only was Mr. Parmar or were he and the entities associated at the time, actually owed this money but for antecedent debt purposes, the transfer -- the purchase of the condominium was actually made to satisfy that antecedent debt because, like a Broadway musical with no music, I guess it's academically, theoretically interesting to argue the existence of antecedent debt, but if the antecedent debt is not actually satisfied by the transfer, what's the purpose of arguing antecedent debt.

MS. HADDEN: No. Your Honor, did understand my

papers correctly. And frankly, I should have attached tax returns as documents to them. It simply didn't occur to me as being another document which I could have obtained in order to support it. That should have occurred to me and simply didn't. But the -- your understanding of my argument was entirely accurate.

THE COURT: That is both existed and satisfied -- that that's the argument.

MS. HADDEN: Correct, yes

THE COURT: All right. And so if I were to conclude from the record before me that I in fact have no admissible evidence of either the existence of an antecedent debt at the time of December 2015 or February of 2016 and I have no evidence -- no admissible evidence -- of the satisfaction of such a debt, how does the defendant fend off summary judgment?

MS. HADDEN: So summary judgment is sought by the trustee under several different arguments. Obviously, there's the claim -- I believe Mr. Nolan phrased it as a textbook case of fraudulent conveyance -- that there was a fraudulent intent involved in this transfer. And I do not believe that the evidence before this Court, looking solely at the admissible evidence, is such that a clear case of fraudulent intent is made out.

I want to go back for just a moment to the

question that Your Honor had asked about 273(a) and I believe, if I caught the question correctly, it was whether, you know --- the plaintiff's argument was that a CEO could never pay himself or obtain compensation for himself under 273(a) without it being a per se fraudulent transfer. And again, if I understood that correctly, Mr. Nolan was agreeing that was, you know, the logical extension of the plaintiff's argument. Taking that down -- further down the logical extension path, I don't believe that that complies with the statute.

273(a) is very specific in that it applies -- and this may very well be one of the reasons why the statute was repealed by the legislature -- but it applies in a very specific scenario where a conveyance has been made while there is a pending judgment or action and it is fraudulent just as to the plaintiff in that action -- that's the plain language of the statute -- fraudulent as to plaintiff in that action -- without regard to the actual intent of the defendant, if, after final judgment, the defendant fails to satisfy the judgment. So it's a very specific factual scenario where there's a pending judgment or pending action solely as to that particular plaintiff and in that particular scenario, the regard of the -- there's no regard given to the actual intent of the defendant.

However, extending the concept of 273(a) to say

that a CEO or other insider or corporate officer can never by paid for a debt without it being a fraudulent transfer extends that statute to the point where it become unreasonable. Obviously, CEOs can be paid. Corporate officers can be paid. The real question is whether or not the business or the company is made insolvent by that transfer or unable to pay the debt in, you know, looking specifically at 273(a), that's outstanding in the action or the judgment.

In this particular case, we're talking about a debt that -- or a judgment that was approximately $200,000, looking at the two -- the combination of the two judgments put together, and a $5 million conveyance. The $5 million conveyance, if you look at the bank records of the debtor, did not render the debtor insolvent at that time, did not -- it's essentially as if -- sort of analogizing it to more normal person scenarios -- if you owe a $20 co-pay to your doctor and you haven't paid for that $20 co-pay -- it's still outstanding -- and then you go out and buy a house. The fact that you've bought a house is not what is rendering you unable to pay your $20 co-pay to your doctor. You just haven't in your head put those two categories in the same -- haven't put those two facts in the same category. You're still able to pay the doctor, you just haven't gotten around to doing it. It's the --

THE COURT: Well, but I think that that --

MS. HADDEN: -- defendant's argument that that's --

THE COURT: Right. But I think in that good hypothetical, if I go out and buy a house, I'm putting the house in my name so I've traded one asset for another asset. The (indiscernible) here I think from the trustee's standpoint is that CHT took $5.5 million and put an asset in the name of another entity.

MS. HADDEN: It did.

THE COURT: So my doctor or my, you know, medical provider can't look to me for that $20 anymore because if I bought that house it's not in my name.

MS. HADDEN: That's a fair point. The defendant's argument is that essentially because Parmar was the manager of 2 Rivers Terrace and the sole human representative of 2 River Terrace that they're essentially equivalent. And he was in a similar scenario with First United Health which was the entity that had the consulting agreement with CHT. Unfortunately --

THE COURT: Be careful how far that argument -- that argument may go further than you want to --

MS. HADDEN: Exactly.

THE COURT: -- but, okay. Yeah.

MS. HADDEN: It may very well take me for me

further than I need to go.

THE COURT: Yeah.

MS. HADDEN: I did also want to touch briefly on -- and I'm, you know, sort of derailing myself for a moment here -- but on the question of the tax returns as evidence of solvency or insolvency. And I believe the trustee has fairly heavily relied on them as evidence of the debtor's insolvency in this form that they were filed by FTI once FTI came in as a consultant in eventually dealing with the debtor's estate.

My contention as to tax returns which I may or may not have managed to argue clearly enough in the motion is that a tax return, again, is something that is a somewhat malleable creature while still being fully admissible under the income regulations and under the tax code. Again, taking sort of a real-world example, if you purchase a laptop for your business, you could deduct that entire expense in one tax year which reduces the income of the business by a larger amount or you could amortize that expense over, I think, either two or three years -- and again, I'm not an accountant so don't do your taxes by what I'm saying -- but if you split that item up over a two- to three-year period, again, complying with the tax laws while doing so, if raises the income for each of those years.

So you can have the same exact set of financial

facts leading to two very different tax returns depending on how you handle amortizable expenses. And the fact that the debtors filed amended tax returns showing a loss as opposed to the tax returns that were originally filed that not only did not show a loss but wound up with the debtor owing taxes and paying those taxes, gives two very different pictures of solvency and I think that goes back to the Court's question as to the fact that there was no actual opinion on solvency presented.

So I think that the central issue before the Court really is solvency and the question of solvency -- whether or not in a summary judgment scenario specifically we're in a situation where the evidence is such that a reasonable jury could not return a verdict for the defendant. And I don't think we are in that scenario. I think we're in a scenario where there are significant questions as to solvency in particular. There are questions as to whether or not there was or was not fair consideration. There's questions as to whether there was or was not an antecedent debt. There are questions as whether there was or was not fraudulent intent.

Obviously, my answers to those questions are very different from the plaintiff's answers to those questions. But I think that we are in as scenario where really in order to have an actual factual determination, you would need a

solvency opinion. You would need expert opinions. You would need full discovery. You'd need someone with records access on both sides so that both sides could argue that issue for the Court. I don't think we're in that scenario. And although we are in agreement on some of the most basic facts, I don't think that the agreement on those most basic facts is sufficient to bring the Court to the level where you would be able to make a determination on a summary judgment motion.

THE COURT: All right. Thank you, Ms. Hadden. Mr. Nolan, anything you want to add?

MR. NOLAN: Yes, Your Honor, just briefly. Typically, when a fraudulent conveyance case comes before a court, most of the time I'm arguing with my colleague over whether or not what was given as consideration was reasonably equivalent value. You know, there's opinions going back and forth whether or not what was exchanged for what was in the ballpark of the conveyance. Those can get really fact intensive but that's not the fact pattern that's in front of this Court.

I mean, the undisputed facts are that there's a transfer in front of the Court for no consideration. None. And we've submitted to the Court the case law in New York that says transactions that are performed without any signs of tangible consideration are presumptively fraudulent. I

cited to the Mendelsohn versus Jacobowitz decision, 394 B.R. 646. And it talks about interfamily transfers without any signs of tangible consideration as being presumably fraudulent, and that's what's in front of the Court right now.

I didn't force Mr. Parmar or the defendant to make the argument in the opposition that they made, that this was a self-interested transaction that benefited Mr. Parmar. I just simply, in the reply brief, drew attention to the fact that even if you accept Mr. Parmar or defendant's argument, Your Honor, that somehow there was fair consideration because there was an antecedent debt and what was transferred satisfied that antecedent debt, that that argument doesn't even make sense because what they've submitted to the Court is, a) not admissible evidence, but one of the documents says that FUH which is a separate third-party corporation agreed to take stock, not to take cash. They would have at best an equity interest and they'd be line behind everybody else.

And then the argument that there's an antecedent debt in the opposition, Your Honor -- it's based on a formula, a formula that the defendant doesn't even give all the different variables to the Court to allow the Court to decide if there is -- even is an antecedent debt owed on the issue of fair consideration.

I certainly appreciate some the arguments from the bench just now about, well, what happens if Mr. Parmar submitted an affidavit saying, you know, he was owed 6 million or 9 million and took the property in consideration for that transfer. But I would submit to the Court that we've submitted to the Court that the Ackerman versus Ventimigilia case out of the Eastern District of New York. It's at 362 B.R. 71. And in the Ackerman case, Your Honor, the Court says that there has to be credible admissible evidence to determine that there was, a) an amount owed under a loan, and b) it has to be credible evidence as to the amount of that debt and that submission of an affidavit or oral testimony alone can't replace a finding of a legitimate antecedent debt owed.

And I would think that that could give some guidance to the Court or at least some comfort that if the Court is so inclined to find that there hasn't been admissible evidence of an antecedent debt and that there hasn't been admissible evidence that an antecedent debt was satisfied, that it's proper at this stage. And Your Honor, we are in an -- unfortunately -- a difficult position with this condominium given the confluence of factors here that there is the sheriff's sale coming up and -- the opposition didn't dispute that summary judgment motions, I guess, they should be granted sparingly but they are proper where the

facts and circumstances are ripe.

It saves everybody time and money. We've got a property right now where the initial judgment was 200,000. Now it's $450,000 on behalf of the homeowner's association. The trustee submits that there is clear evidence in front of this Court that -- of both the intentional fraudulent conveyance and the constructive fraudulent conveyance. And there's just not a reason to kick the can down the road any further. Thank you, Your Honor.

THE COURT: All right. Thank you. All right. I -- Court appreciates the arguments from both sides and the status update from counsel for the condominium association. I am not prepared to rule today. I want to give further consideration to both the papers and what's been argued this afternoon. Having also a fairly full docket next week, I cannot get to a ruling before your current sale date. I would recommend that the parties continue their discussions about either a further adjournment of that sale date or the protocol under where the property can be monetized while the Court is considering the adversary proceeding in general and the summary judgment motion in particular. I will give you all for your timing purposes -- Ms. Mills, can we use February 9th at three o'clock at least as a tentative ruling?

CLERK: Hold one second, Judge.

THE COURT: Any time.

CLERK: Hold on one second. We can use two -- can we go to 2:30 because you already have pre-trials on that day.

THE COURT: All right. So February 9th at 2:30. Ms. Mills, if you'll docket notice of an adjournment. This is -- the intention of the Court would be to give you all a ruling on this motion on February 9th at 2:30. If for some reason the Court's not in a position to rule at that time, we'll notify you all in advance. But that would a ruling conference only. That's not any further argument. February 9th at 2:30.

MS. HADDEN: Thank you.

MR. NOLAN: (indiscernible)

THE COURT: All right. Very well --

MR. PITTINSKY: Your Honor, speaking for the condominium, I will consult with the board, advise them of that control ruling date and then I will advise Mr. Nolan and Ms. Hadden by email on what the outcome of that is. It may take me a day or two to -- both of them to get the board together to get an answer on that. And Ms. Hadden, I look forward to speaking offline on the state court case that you say you've commenced. All right?

MS. HADDEN: Yeah. So I'll give you a call as soon we get off here.

THE COURT: All right. And again, this is redundant to what I've already said, but if the parties are amenable to a sale protocol, the Court would certainly be open to establishing the procedure under which the unit is monetized and the parties fight over who gets the money.

All right. So then we'll be -- Ms. Mills, do we have any other on the docket for this morning on the ten o'clock call?

CLERK: That's it, Judge.

THE COURT: All right. So then until February 9th at 2:30 p.m. Again, the Court appreciates the papers submitted as well as the arguments of the parties this morning.

MS. HADDEN: Thank you, Your Honor.

MR. NOLAN: (indiscernible), Your Honor.

MR. PITTINSKY: Thank you.

THE COURT: The Court will therefore be in recess until one o'clock and we'll go off the record. Good day, all.

AUTOMATED VOICE: We're sorry. Your conference is ending now. Please hang up.

(Whereupon these proceedings were concluded at 11:35 AM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: March 1, 2021